

ALA American Library Association n

Statement of American Library Association to Senate Communications Subcommittee Regarding S. 2326 The Children's Online Privacy Protection Act of 1998

September 23, 1998

The American Library Association appreciates the opportunity to submit testimony for the record on S. 2326, the Children's Online Privacy Protection Act of 1998, sponsored by Senators Richard Bryan and John McCain.

The library profession is strongly committed to the protection of personal privacy. ALA policies on confidentiality are longstanding and central to librarians' professional ethics. Librarians do not release information related to any library patron's research, reading material, or information sought or received, and materials consulted, borrowed, acquired [or]... other personally identifiable uses of library materials, activities, or services." American Library Association Policy 52.4 (emphasis added). Statutes in most states and the District of Columbia support these ethical standards.

At the same time, librarians view their principal mission as providing broad access to ideas and information, and promoting the First Amendment values of free inquiry and free expression. We believe that freedom of expression and protection of privacy are not only compatible, but that protection of personal privacy is an important guarantor of intellectual freedom. Indeed, if intellectual freedom is to flourish on the Internet, it must exist within an environment where one's personally identifiable information, including one's reading, viewing and surfing habits, are kept confidential.

For this reason, the ALA generally supports efforts to provide greater protection for personal privacy on the Internet for children and adults alike. We are concerned, however, that as introduced, S. 2326 wields too broad a brush. We believe it would have a chilling effect on children's access to information, and would diminish rather than protect their personal privacy. We are further concerned that the bill would interfere with and limit the ability of children to take full advantage of the interactive nature of the Internet. We know that this is not the intent either of the sponsors of S. 2326 or the Federal Trade Commission whose

recommendations underlie the bill. While the ALA is hopeful that the problems it has identified can be resolved and appreciates the willingness of the sponsors to address our concerns, we nevertheless believe that a rush to legislate in the closing weeks of Congress could produce a measure with serious unintended consequences.

The American Library Association urges this Subcommittee to carefully consider the following issues before it takes action on S. 2326:

1. Is the harm addressed by the bill narrowly tailored to protect children's privacy? S. 2326 makes mere collection of personally identifiable information the trigger for requiring parental notice, consent and disclosure, regardless of whether the information collected will be subsequently stored in a database, used for marketing or disclosed to a third party. Under the bill, every e-mail request for information from a child to a targeted website would require parental consent or notice before the site could respond to the request. What would be the impact on a child's ability to take advantage of the interactive nature of the Internet, if every request for sports statistics, music lyrics, or a subscription to a newsletter triggers these requirements? The ALA believes that the ability to directly communicate interactively with a website by e-mail lies at the heart of the Internet's value. Interactions that are initiated by the child should not fall within the scope of this bill if a site merely collects an e-mail address in order to respond, particularly if no further use of the information is anticipated.
2. Are the appropriate websites targeted by this legislation? S. 2326 defines a commercial website to include any person offering products or services for sale. That definition would include many non-profit organizations, including libraries, museums, zoos, health clinics and advocacy group sites that may offer books, subscriptions or other fundraising items for sale on their website as a de minimus part of their mission. Is it the intent of this legislation to require that children, if they request and receive information about dinosaurs, ancient Egypt, or tropical rain forests from the Smithsonian or an environmental organization, must obtain parental consent or notice before the information can be provided? Should a teen health site that provides information on Aids, teen pregnancy or sexually transmitted disease have to notify parents before sending a teenager a requested pamphlet? Is a library that incidentally sells posters promoting reading or bookmarks and coffee mugs compelled to violate professional ethics and state law

in order to answer a child's question on a homework help line? The ALA believes that the answer should be no and urges the Subcommittee to limit the definition of commercial websites to the for-profit sites that target children for marketing purposes and are already within the FTC's jurisdiction.

3. Should mature minors over 12 be treated as children for purposes of privacy legislation? Teenagers have independent rights to free speech and privacy that would be severely compromised if parental notice were required each time they engaged in a transaction with a commercial website. If a teenager is able to sign up for a contest or a newsletter in a bookstore without parental supervision, what rationale is there for imposing parental notice requirements to do the same at Amazon.com? While it may be appropriate to require some heightened "consent" requirement for this age group before personally identifiable information is collected, the parental notice requirements together with the disclosure obligations in Section 3(2)(A)(v) would prove damaging to the rights of teenagers and burdensome to their parents. For this reason, any such provisions should not apply to minors over the age of 12.

4. How will verifiable parental consent or notice work in the on-line environment? Does current technology permit verification in an efficient and cost-effective manner? Since children do not have to provide their real age in order to participate in activities at a site, is the consent/notice remedy practical without age verification? Will this process burden the child's use of interactive resources as well as the parent? How would parental consent or notice work in situations where children only have access to computers in the public library, at school, in after-school programs, or in community centers? How will these requirements impact children whose parents are not computer literate, or who do not speak or read English? The ALA is concerned that, on close examination, the remedy of consent or notice may prove unworkable, unwise or unduly burdensome in some or all circumstances. We urge, therefore, that legislation be sufficiently flexible to permit the FTC to fashion other remedies if, as we anticipate, the rulemaking record reveals problems with these remedies in some situations.

The questions that we have raised are not exhaustive of our concerns, but they plainly demonstrate the danger of going forward without a carefully considered exploration of all the issues raised by this legislation. While the FTC rulemaking authorized by S. 2326 can fine-tune the legislation, it cannot change the scope of the law nor can it rewrite the remedies authorized by Congress. For that reason, we believe it is better to get it right than to rush to legislate. The ALA looks forward to working with this Subcommittee to fashion rules that will protect everyone's privacy online.

The American Library Association, founded in 1876, is the oldest and largest

library association in the world. ALA includes members from all types of libraries including school public, state, academic, and special libraries. With a membership of more than 57,000 librarians, library trustees, library educators, friends of libraries and other interested persons from every state, ALA is the chief advocate for the people of the United States in their search for the highest quality of library and information services.